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LAW OFFICES

KOTEEN & NAFTALIN

1150 CONNECTICUT AVENUE  
WASHINGTON, D.C. 20036

BERNARD KOTEEN  
ALAN Y. NAFTALIN  
RAINER K. KRAUS  
ARTHUR B. GOODKIND  
GEORGE Y. WHEELER  
HERBERT D. MILLER, JR.  
MARGOT SMILEY HUMPHREY  
PETER M. CONNOLLY  
M. ANNE SWANSON  
CHARLES R. NAFTALIN

GREGORY C. STAPLE  
OF COUNSEL

TELEPHONE  
(202) 467-5700  
TELECOPY  
(202) 467-5915  
CABLE ADDRESS  
"KOBURT"

November 30, 1993

Mr. William F. Caton  
Acting Secretary of Federal  
Communications Commission  
1919 M Street, NW  
Washington, DC 20054

Re: Implementation of Section 309(j) of the Communications  
Act - Competitive Bidding (PP Docket No. 93-253)

Dear Mr. Caton:

Transmitted herewith on behalf of Telephone and Data Systems, Inc. are an original and nine copies of its Reply Comments in the above-captioned proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
George Y. Wheeler

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NOV 30 1993

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)  
of the Communications Act

PP Docket No. 93-253

Competitive Bidding

To: The Commission

**REPLY COMMENTS OF**  
**TELEPHONE AND DATA SYSTEMS, INC.**

George Y. Wheeler  
Koteen & Naftalin  
1150 Connecticut Avenue, N. W.  
Suite 1000  
Washington, D. C. 20036  
(202) 467-5700

November 30, 1993

Its Counsel

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## SUMMARY

Telephone and Data Systems, Inc. addresses in its reply comments the six aspects of the Commission's competitive bidding proposals listed below. In support of our discussion of the auction methodologies to be used for broadband PCS licensing, we include an analysis prepared by Robert J. Weber, Professor of Managerial Economics and Decision Sciences at the J.L. Kellogg Graduate School of Management at Northwestern University, Attachment B to our reply comments.

### Nationwide Combinatorial Bidding

We agree with the numerous commenters opposing nationwide combinatorial bidding for broadband PCS. The brief arguments of Bell Atlantic and MCI supporting nationwide combinatorial bidding have previously been refuted. MCI's proposal to extend nationwide combinatorial bidding options to include channel blocks E, F and G should be rejected as fundamentally inconsistent with Congressional goals promoting diverse participation in broadband PCS.

### Design of Auction Methodologies for Broadband PCS

We support simultaneous ascending-bid auctions for channel blocks A and B, followed by combinatorial bidding across spectrum on channel blocks C and D, and then on channel blocks E, F and G. All licenses for BTA areas included in a specific MTA service area would be auctioned together in simultaneous parallel auctions. Professor Weber describes the benefits from adopting

such methodologies and the problems with the simultaneous ascending-bid procedures proposed by Pacific Bell, PacTel and NTIA in Attachment B to our reply comments.

#### Definition of Rural Telephone Company

We strongly support the definition of "rural telephone company" proposed by the National Rural Telecom Association to qualify for designated entity status. We believe that this definition strikes a good balance in focusing on telephone service to small communities (under 10,000 in population) outside urbanized areas. The arguments made by some commenters to disqualify any telephone company affiliated with other telephone companies in the aggregate serving 150,000 or more access lines should be rejected. Telephone companies like those of TDS that are rural telecommunications specialists should not be disqualified in consideration of the findings and goals for competitive bidding established by Congress.

#### MCI Proposed Special Eligibility Restrictions

We strongly object to the attempts of MCI to extend cellular eligibility restrictions to preclude bidding by cellular carriers on one of the 30 MHz MTA licenses. This proposal is fundamentally at odds with the Commission's conclusion to permit cellular licensees to operate PCS systems outside of their cellular service areas.

#### Set-Asides for Designated Entities

We join the numerous commenters supporting the set-aside of PCS channel blocks C and D for bidding by designated entities.

The arguments of NYNEX and others opposing all set-asides should be rejected in consideration of clear Congressional goals to promote the participation of designated entities in the launch of broadband PCS.

Alternative Demonstration of Financial Qualification.

We and several other commenters have proposed that the Commission permit its proposed "upfront payment" to take the form of a standby letter of credit. We believe that use of standby letter of credit arrangements is administratively efficient and meets all of the Commission's objectives for prequalifying bidders.

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**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D. C. 20554

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In the Matter of	)	
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Implementation of Section 309(j)	)	PP Docket No. 93-253
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	)	
Competitive Bidding	)	
To: The Commission		

**REPLY COMMENTS OF**  
**TELEPHONE AND DATA SYSTEMS, INC.**

Telephone and Data Systems, Inc., a telecommunications holding company, on behalf of itself and its subsidiaries, (collectively "TDS"), by its attorneys, submits the following Reply Comments in response to the Commission's Notice of Proposed Rule Making regarding the implementation of competitive bidding selection procedures under Section 309(j) of the Communications Act ("NPRM").<sup>1</sup>

**INTRODUCTION**

In our Comments, we addressed many fundamental aspects of the Commission's proposals for implementation of competitive bidding. Our proposals covered the application of competitive bidding to specific radio services and facilities, the design of auction methodologies, particularly for broadband PCS (including

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<sup>1</sup> A list of parties filing Comments in these proceedings, including the abbreviated names used for reference in these Reply Comments, is Attachment A hereto.

our strong opposition to nationwide combinatorial bidding), the treatment of designated entities, bid collusion policies, demonstration of financial qualifications and other aspects of competitive bidding implementation.

In reviewing the comments of others, we find that many also support the exclusion of intermediate microwave links and nationwide non-commercial 220-222 MHz systems from competitive bidding, the need for "open" auctions in which the identities of the bid amounts and the bidders are disclosed during the auction, the desirability of adopting anti-collusion rules, and the benefits of eliminating financial qualification showings where the winning bidders have made payments of all amounts due the U.S. Treasury. Because of the widespread agreement on these points, we will not repeat the reasons previously presented in our comments supporting Commission adoption of these important policies.

A major section of these reply comments is devoted to an evaluation of the numerous alternative auction methodologies, particularly as they are proposed to be implemented for broadband PCS licensing. In support of the recommendations presented in our comments, we include as Attachment B hereto an analysis prepared by Robert J. Weber, Professor of Managerial Economics and Decision Sciences at the J.L. Kellogg Graduate School of Management at Northwestern University of significant proposals submitted by other commenters.



Other sections of our reply comments cover our continued opposition to nationwide combinatorial bidding and support for set-asides for designated entities on PCS channel blocks C and D and for adoption of the National Rural Telecom Association ("NRTA") definition of rural telephone company. We also discuss broadening the acceptable forms of financial showings which prospective bidders would be required to tender to include standby letters of credit.

#### DISCUSSION

1. The Commission Should Not Adopt Nationwide Combinatorial Bidding Options for Broadband PCS.

We and numerous commenters have presented extensive analysis demonstrating that nationwide combinatorial bidding is unjustified and unnecessary and will have severe anticompetitive consequences. We strongly support denial of all nationwide combinatorial bidding for broadband PCS licenses.

The comments supporting nationwide combinatorial bidding, principally those filed by Bell Atlantic and MCI, provide little or no discussion of the merits of this option for broadband PCS. Bell Atlantic states that it supports "the general concept."<sup>2</sup> MCI presents only a brief recitation in one sentence of factors affecting deployment of PCS on a nationwide basis. We strongly disagree with MCI that nationwide licensing will "ensure rapid deployment," or reduce transaction costs. Contrary to MCI's claims, deployment of PCS under nationwide

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<sup>2</sup> Bell Atlantic Comments, p. 14.

licensing is expected to delay implementation outside densely populated urban areas. MCI and any other company interested in serving broadly regional markets have the option to aggregate licenses in individual auctions.

We also oppose MCI's proposal to expand nationwide licensing options to include nationwide combinatorial bidding for an aggregate 30 MHz block (consisting of channel blocks E, F, and G). This proposal would severely restrict opportunities for meaningful regional and local participation in PCS by the vast number of companies for which nationwide licensing is not an option. It should be rejected as fundamentally inconsistent with important Congressional goals for the implementation of competitive bidding as listed in Section 309(j)(3) of the Act.

2. Simultaneous Ascending Bid Auctions Allowing Limited Combinatorial Options in 20 MHz and 10 MHz PCS Channel Blocks Should Be Adopted.

The numerous comments reflect a large number of approaches to spectrum auction methodologies with most of the comments focusing on broadband PCS.<sup>3</sup> In varying degrees each of these approaches reflects desirable features including providing valuable information (i.e. market value and bidder identity), affording fair opportunities to aggregate or to combine licenses fostering efficient allocations at prices which reflect the value of the licenses to the winners, avoiding opportunities for manipulation of the bidding, minimizing the need for bidders to

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<sup>3</sup> An affiliate of TDS, American Paging, Inc., is concurrently filing reply comments which include detailed proposals for narrowband PCS auctions.

make strategic guesses and permitting selection of winners within a reasonable time frame.<sup>4</sup>

We believe that PCS auction procedures should be tailored to the specific circumstances of different service area and channel block sizes to achieve the foregoing objectives. As Professor Weber states in Attachment B to these reply comments:

"Simultaneous ascending-bid auctions for the block-A and block-B licenses, in sequence beginning with the largest MTAs, followed by combinatorial bidding across spectrum on blocks C and D, and then on blocks E, F, and G, with simultaneous parallel auctions on an MTA-by-MTA basis, seem to provide a good and proper mix of theoretical advantages and practical implementability. Scheduling requirements are easily predictable (and therefore the FCC can pre-announce the date on which construction permits will be issued allowing applicants to begin their planning while guaranteeing that none get a "head start" on actual development), and bidders are never confronted with an unmanageable overload of information. The ultimate goal, to provide a format for the efficient provision of personal communications services to the public, seems attainable." (Attachment B, p. 9.)

Professor Weber's attached statement also includes an analysis of the simultaneous ascending-bid procedures proposed by Pacific Bell. He concludes that they "...expose bidders to substantial amounts of strategic risk and hold the potential for extremely-inefficient outcomes requiring substantial post-auction trading." (Attachment B, p. 3.) He also concludes that the time required to complete an auction under such procedures would substantially exceed the estimates made by Pacific Bell (notwithstanding the proposed use of 5% bid increments).

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<sup>4</sup> See discussion of these matters in Attachment B, p. 3-4 and 5-6.

Regarding the auction proposals of PacTel, Professor Weber concludes that bidders with limited resources would be disadvantaged, that undesirable opportunities for "favoring" other bidders (and possibly temptations for dealmaking) are created through use of the proposed bid retraction procedures and that the auction would be extraordinarily complicated considering the possibility of cascading bid retractions. (Attachment B, pp. 4-5)

The NTIA proposal, Professor Weber concludes, has practical problems because of the huge numbers of possible combinatorial bids which would need to be assessed. The resources needed for bidders to monitor the possible combinations, the compounding of potential "free-rider" problems and the opportunities for abuses (i.e. dealmaking) also present serious difficulties. (Attachment B, pp. 5-6.)

(a) Proposed Bidding Method

We agree with the numerous commenters supporting open (oral or electronic with full disclosure of bidder identity) ascending bid procedures. This is a key feature of our proposals.

(b) Sequence of Bidding

Our proposals incorporate sequential auctions for MTA licenses following the descending population order also supported by many commenters. On the BTA level of the auctions, we have clustered all of the BTAs in a particular MTA for simultaneous

auction in order to limit the total number of licenses up for bid at any one time and to permit logical patterns of aggregation.

We also proposed simultaneous bidding to simplify bidding options (i.e. to avoid strategic "guesses"), to provide reasonable opportunities for a bidder who values the license the most to acquire the license and, if possible, to diminish the time required for license selection. Professor Weber describes in the attached statement both the sequencing and the simultaneous features of our proposals. (Attachment B, pp. 6-8.)

(c) Bidding for Groups of Licenses

We have incorporated limited combinatorial bid options for channel blocks C, D, E, F and G to permit efficient spectrum aggregation within the smaller 20 MHz and 10 MHz blocks. Implementation of simultaneous ascending-bid auctions for groups of BTAs, with combinatorial bidding features, has desirable public policy attributes and is manageable in a practical sense. This aspect of our proposals is discussed by Professor Weber in the attachment to these reply comments. (Attachment B, p. 7-8.)

(d) Bidding Options for Designated Entities

Under our proposals, designated entities would be able to aggregate BTAs within any MTA service area in channel blocks C and D and, through combinatorial bidding options, to acquire 30 MHz spectrum (i.e. 20 MHz channel block C plus 10 MHz channel block D). We also believe that designated entities should have the right to exercise installment payment options for licenses in channel blocks E through G. This will enhance opportunities for

designated entities to aggregate 10 MHz blocks (from channel blocks E, F and G) which could be used for independent PCS systems or could be combined with spectrum licensed to the same designated entity in channel blocks C or D. See Professor Weber's discussion of bidding options for designated entities in Attachment B, p. 7-8.

(e) Need for Prompt Implementation of Broadband PCS Auctions

We disagree with proposals suggesting that narrowband PCS auctions should precede broadband PCS auctions. The focus of the comments in this proceeding (and indeed of the enabling legislation for competitive bidding) has been on broadband PCS which is expected to have immense public impact. The earliest possible introduction of these important new technologies should not be delayed in favor of narrowband PCS licensing.

(3) The Definition of Rural Telephone Companies Proposed by the National Rural Telecom Association Should Be Adopted.

We support the definition of "rural telephone company" proposed in the comments of the NRTA. Local exchange carriers that offer local exchange service in "any local exchange study area" which does not include any incorporated place of 10,000 or more, or any part thereof, or any incorporated or unincorporated area included in an "urbanized" area, serve areas which are clearly rural. Another important feature of the NRTA definition is that it excludes all local exchange carriers that are not primarily rural telephone companies.

The foregoing definition addresses specific Congressional findings which, as explained in the Conference Report on Section 6002 of the Budget Act, were omitted from the statutory text and incorporated by reference in that Conference Report from the language of Section 4002 of the Senate Amendment:

"...(10) competitive bidding should be structured to--  
 ...(B) recognize the legitimate needs of rural telephone companies in providing spectrum-based, common carrier services in rural markets in which they provide telephone exchange service by wire;"

Other objectives of the competitive bidding statute point to the special role of local exchange carriers in developing rural services and rapidly deploying new technologies, products and services benefiting the public residing in rural areas (Section 309(j)(3)(A) of the Act). Congress also states that competitive bidding is intended to promote economic opportunities, competition and deployment of new and innovative technologies to the American people "by disseminating licenses among a wide variety of applicants" including "rural telephone companies." (Section 309(j)(3)(B) of the Act.)

The comments reflect widespread support for adoption of a definition for "rural telephone company" which encompasses more than the narrow limits imposed in Section 63.58 of the Commission's rules. We believe that the NRTA definition referenced above strikes a good balance in focusing on telephone services to small communities (under 10,000 in population) outside urbanized areas. The record before the Commission in its Telephone Company-Cable Television Cross-Ownership rulemaking (CC

Docket No. 87-266) demonstrates that the 10,000 population upper limit is a useful benchmark for the purposes of encouraging local telephone companies to offer services in areas which would either be unserved or receive service many years after other more populous areas have been served.

We believe that the definition of rural telephone company should include all telephone companies, including TDS and the many others, who primarily serve small rural communities and have been able to make a difference by providing advanced facilities and high quality services to their rural subscribers at affordable prices. The obstacles to rural telecommunications development are daunting including low subscriber density, small subscriber base, high costs and a small proportion of business customers. The benefits from improved telecommunications provided by rural telephone companies have often been dramatic as demonstrated in the record of the NTIA Notice of Inquiry: Comprehensive Study of the Domestic Telecommunications Infrastructure, Docket No. 91296-9296 ("Notice of Inquiry").

The commitment of TDS and its telephone operating companies to serve rural America dates back to the founding of the company in 1969. With over 90 small telephone companies now serving rural communities, TDS has demonstrated unique and valuable skills in developing quality service offerings at affordable prices for the residents of rural areas. Attachment C is a list of TDS companies, the small rural communities they serve and the number of access lines for each company. In comparison to the



large number of access lines served by companies in metropolitan areas, the TDS companies are quite small, emphasizing the rural character of the service. The smallest, Danube Telephone Company, in Danube, Minnesota had a total of 444 access lines (as of October 31, 1993). The largest is Tennessee Telephone Company serving fifteen exchanges in East Central Tennessee with a total of 43,769 access lines (as of the same date). The average for the TDS companies is 3,825 access lines per company. Another measure illustrating this point is the number of access lines per central office. The average Bell Operating Company ("BOC") central office serves over 10,000 access lines whereas the average TDS company central office serves approximately 1,200 access lines. Still another measure of the rural character of the service areas of the TDS companies is the number of business access lines as a percentage of total access lines. The average among the BOCs, 32%, is approximately double that of the TDS companies, 17%. Customer density per route mile also confirms the unique commitment of the TDS companies to rural telecommunications development. For example, the national average among all telephone companies is 50 customers per route mile. The average among the BOCs is 130 customers per route mile. The comparable average for all TDS companies is eight customers per route mile.

The impact of the direct involvement of the TDS companies in development of rural telecommunications has been documented in the record of the NTIA Notice of Inquiry referenced above.

Examples include the installation of digital switching by Tellico, a TDS operating company in East Tennessee which led to the decision of an important employer to locate a manufacturing plant in Tellico's service area. This pattern was then repeated as other employers, having confirmed with the first company that they would obtain superior telephone service, also decided to locate in Tellico's service area. The TDS companies now operate digital switching facilities serving approximately 96 percent of the total company-wide access lines. Infrastructure improvements by other TDS companies have been instrumental in encouraging expanded business operations and employment opportunities. TDS companies have been actively involved in deploying interactive video and data systems for educational use including Midstate Telephone Company, Oklahoma Communications System, Inc., Shiawassee Telephone Company, Quincy Telephone Company, Tennessee Telephone Company, Concord Telephone Company, Bonduel Telephone Company and Strasburg Telephone Company.<sup>5</sup> Effective health and emergency telecommunications are other critical areas where the TDS companies have had a significant impact in rural areas.

We have gone into some detail to illustrate specific aspects of the development efforts of the TDS companies in rural areas to confirm its longstanding commitment to meet the special needs of rural America. The new and innovative service offerings, the opportunities for cost reductions in existing services, the

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<sup>5</sup> Additional TDS companies are planning interactive video and data systems.

expanded "reach" of wireless technologies to meet needs in unserved areas, as well as other benefits from use of broadband PCS technologies will be important new tools in the hands of rural telephone companies. As designated entities, these rural companies are not guaranteed that they will receive a license but they will have "expanded opportunities" to participate in the deployment of the newest PCS technologies.

In response to those commenters who argue to limit severely the number of telephone companies that could qualify as "rural telephone companies," we reiterate that the purpose of these proceedings is to implement procedures to enhance service offerings based upon promising technologies, like broadband PCS, in rural America and to recognize the needs of rural telephone companies to participate in the launch of these important new service offerings. Among the companies which already serve rural areas there are some like the TDS companies that are rural telecommunications specialists. They have the history, knowledge, commitment and established base of operations in many communities across rural America to deploy PCS technologies promptly and effectively to meet the unique requirements of rural areas.

The Commission should reject the arguments of APC, Dial Page, McCaw and others that any telephone company affiliated with other telephone companies in the aggregate serving 150,000 or more access lines should be disqualified as a rural telephone company. These arguments ignore the fact that the fundamental

purposes of competitive bidding are to encourage telecommunications opportunities in those rural areas where they are most needed. The TDS companies do not serve rural areas as an ancillary aspect of local exchange operations in large metropolitan areas. The fact that the TDS companies serve more than 150,000 access lines in rural America is a significant measure of their widespread commitment and expertise in this important area of the nation's developing telephone infrastructure. The total number of access lines that these companies serve in the aggregate is not relevant for the purposes of determining eligibility here. The NRTA definition which we support had it right....telephone companies with a study areas including only communities with a population under 10,000 and no urbanized area should qualify as rural telephone companies for the purposes of bidding on PCS licenses to serve areas encompassing their existing operations.

(4) The Commission Should Reject The MCI Proposal To Exclude So-Called "Dominant" Cellular Carriers From Bidding On One Of The MTA Bands Of Licenses.

We strongly object to the attempts of MCI to interject new and totally unjustified cellular eligibility restrictions to preclude so-called "dominant" cellular carriers from bidding on one band of 30 MHz MTA licenses.<sup>6</sup> It makes no sense to exclude the companies which have spearheaded the launch and expansion of cellular mobile services in the last decade. The public benefits from their participation in the similar launch of broadband PCS technologies in terms of rapid, widespread, cost-effective

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<sup>6</sup> MCI Comments, p. 4.

development of these technologies to provide new and innovative services should be paramount. We believe that the Commission has already gone farther than it should have in adopting the "20/10" cellular eligibility restrictions in the PCS rulemaking. The gratuitous expansion of those restrictions as proposed by MCI is totally unjustified and should be rejected as fundamentally at odds with the Commission's conclusion in its PCS Second Report and Order that "...the public interest would be served by allowing cellular providers to obtain PCS licenses outside of their cellular service areas."<sup>7</sup>

(5) The Commission's Proposals To Set-Aside PCS Channel Blocks C and D For Bidding By Designated Entities Should Be Adopted.

The Commission's decision to consider reserving or setting-aside PCS channel blocks C and D for bidding by designated entities as defined in Section 309(j) of the Act is directly responsive to the findings, goals and procedures established by Congress for competitive bidding. The arguments of NYNEX and others opposing set-asides should be rejected.

NYNEX does not argue that the Commission has acted outside the bounds of its statutory mandate under the Act. Rather it makes a theoretical argument that this procedure would "disrupt the market-based allocation of the spectrum" and "could cause the spectrum to remain unused."<sup>8</sup> On the contrary, we have concluded

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<sup>7</sup> PCS Second Report and Order in Gen Dkt. No. 90-31\_ (released October 22, 1993), ¶ 104.

<sup>8</sup> NYNEX Comments, p. 19.

as described in our comments in this docket (pp. 20-21) that bidding for channel blocks C and D will draw widespread participation, achieve high market value relative to other comparable spectrum and meet important Congressional goals regarding the participation of rural telephone companies, small business and businesses owned by minorities and women.

(6) The Commission Should Approve Use of Standby Letters of Credit as an Alternative Demonstration of Financial Resources.

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TDS, Minority PCS and Palmer Communications all recommend that the Commission permit its proposed "upfront payment" to take the form of a letter of credit.<sup>9</sup> The flexibility of making an advance deposit in the form of a letter of credit is highly desirable in that it will avoid the need for the Commission to establish depository arrangements for upfront payments, limit the cost to bidders of depositing funds which will not bear interest, and "ease the burdens currently imposed by the Commission's present refund methods."<sup>10</sup>

As previously discussed in our comments in this docket (pp. 22-23), a standby letter of credit is a widely used method for confirming that a bank will make payment on account of a specified company. See Uniform Commercial Code, Section 5-103. This form of credit arrangement has been used often to guarantee payment of obligations including those due and payable to

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<sup>9</sup> Minority PCS Comments, p. 10-11 and Palmer Comments, p. 8.

<sup>10</sup> Minority PCS Comments, p. 11.

governmental entities. We attach here an example of a standby letter of credit to illustrate how financial qualifications could be documented in this manner (Attachment D hereto).

We anticipate that a bidder would tender to the Commission (or its agent) the standby letter of credit on the day of and prior to the auction to demonstrate financial qualifications. In the event the bidder submitting such a letter of credit is not successful, the Commission (or agent) would promptly return it. If, on the other hand, this bidder makes a winning bid, the Commission would continue to hold the letter of credit pending receipt within five business days of the full amount of the initial payment due as prescribed by the Commission (either by cashier's check or wire transfer directly to an account at the U.S. Treasury). In the event the bidder fails to make the required initial payment, the Commission would exercise its rights under the letter of credit instrument to collect immediately from the bank issuer the full amount of any monetary forfeiture owed by the bidder.

#### CONCLUSION

We have made detailed proposals concerning the auction procedures for broadband PCS licensing in consideration of the accelerated pace for selecting methodologies for this licensing as required by Congressional mandate. We believe that our proposals which were developed upon recommendations of Professor Weber who has significant experience in advising government agencies regarding the uses of auction procedures, meet all of

the Commission's goals articulated in Para. 18 of its Competitive Bidding NPRM. We propose that they be adopted.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By

  
George Y. Wheeler  
George Y. Wheeler

Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 467-5700

November 30, 1993

Its Attorneys



CERTIFICATE OF SERVICE

I, Abbie Weiner, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Reply Comments of Telephone and Data Systems, Inc.", was sent by first class U.S. mail, postage prepaid, on this 30th day of November, 1993 to the offices of the following:

John D. Pellegrin  
John D. Pellegrin, Chtd.  
1140 Connecticut Avenue, NW, Ste. 606  
Washington, DC 20036  
Counsel for Abraham Kye, et. al.

Robert B. Kelly  
Kelly, Hunter, Mow & Povich, P.C.  
1133 Connecticut Avenue, NW  
Washington, DC 20036  
Counsel for Advanced MobileComm Technologies, Inc.  
and Digital Spread Spectrum Technologies,  
Inc.

Louis Gurman  
Gurman, Kurtis, Blask & Freedman, Chtd.  
1400 16th Street, NW, Ste. 500  
Washington, DC 20036  
Counsel for AllCity Paging, Inc.

Curtis White  
Alliance for Fairness and Viable Opportunity  
1920 L Street, NW  
Ste. 700  
Washington, DC 20036

David L. Nace  
Lukas, McGowan, Nace & Gutierrez, Chtd.  
1819 H Street, NW, 7th Floor  
Washington, DC 20006  
Counsel for Alliance of Rural Area Telephone and Cellular  
Service Providers